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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,548	07/07/2000	DOUGLAS G. LOWENSTEIN	6603/2US	6763

7590 01/17/2002

SHEARMAN & STERLING
INTELLECTUAL PROPERTY DOCKETING
599 LEXINGTON AVENUE
NEW YORK, NY 10022

EXAMINER

KANOF, PEDRO R

ART UNIT	PAPER NUMBER
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2164

DATE MAILED: 01/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/611,548

Applicant(s)

LOWENSTEIN

Examiner

KANOF

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Jul 7, 2000

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-101 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-101 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2

20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

2. Claims 1-7, 31, 36, 74, 93 and 96 are rejected under 35 U.S.C. 102(e) as being anticipated by Nancy R. Little, *What you need to know about financing with synthetic leases*, Practical Real Estate Lawyer, vol. 5, No. 2, pages 35-46, March 1999 (hereafter Little).

Claim 1: Little discloses a method, comprising the steps of:

leasing a space from a landlord to a tenant under a space lease (page 1, lines 28-33);

leasing improvements to the space from a special purpose entity to the tenant under an improvements lease distinct from the space lease, the special purpose entity being a legal entity owned under tax accounting rules by a landlord of the space, the special purpose entity owning the improvements lease (page 6, lines 21-34);

development of the tenant improvement being financed by the special purpose entity, the special purpose entity being capitalized by:

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(a) an equity investment by the landlord of at least three percent of the value of the tenant improvements (page 4, lines 35-40) and

(b) debt issued by the special purpose entity of at least about eighty percent of the value of the tenant improvements, the debt being non recourse against the special purpose entity, the landlord and the improvements and being secured by an absolute obligation of the tenant (page 4, lines 42-45);

rent payments under the improvements lease having a present value at least equal to a value of the improvements at a time of commencement of the improvements lease (page 2, lines 1-6 and 35-40);

the improvements lease being structured together with the space lease to support an accounting conclusion that the space lease and improvements lease are to be considered together as a single lease and classified as an operating lease, financial statements of the special purpose entity being consolidated with financial statements of the landlord, rent payments under the improvements lease being fully tax deductible to the tenant (page 1, lines 34-51).

Claim 2: Little discloses a method comprising the steps of:

leasing a space from a landlord to a tenant under a space lease (page 1, lines 28-33);

leasing improvements to the space to the tenant under an improvements lease distinct from the space lease, the improvements lease being structured together with the space lease to support an accounting conclusion that the space lease and improvements lease are to be

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considered together as a single lease and classified as an operating lease, or “the transaction can be construed as a lease” (page 1, lines 42-47 and page 7, lines 33-34).

Claim 3: Little discloses the method of claim 2, wherein the improvements are leased from a special purpose entity, the landlord of the space being the owner of, or lessor of the tenant improvements to, the special purpose entity under tax accounting, financial statements of the special purpose entity being consolidated with financial statements of the landlord (page 6, lines 21-34).

Claim 4: Little discloses the method of claim 3, wherein rent payments under the improvements lease are fully tax deductible to the tenant (page 1, lines 42-46).

Claim 5: Little discloses the method of claim 3, wherein the improvements being financed by debt issued by the special purpose entity, the debt being non-recourse against the special purpose entity, the landlord and the improvements (page 6, lines 21-31).

Claim 6: Little discloses the method of claim 5, wherein the debt is secured by a rent obligation of the tenant under a lease of the improvements (page 1, lines 30-33).

Claim 7: Little discloses the method of claim 3, wherein the special purpose entity is capitalized by participation comprising:

(a) an equity investment by the landlord of at least three percent of the value of the improvements (page 6, lines 13-16) and

(b) debt issued by the special purpose entity for at least about eighty percent of the value of the improvements (page 4, lines 42-45).

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Claim 31: Little discloses a method, comprising the steps of:

leasing a space to a tenant (Page 1, lines 28-33); and

leasing improvements (buid-to-suit, page 1, line 32) to the space from a special purpose entity (page 6, lines 10-34) to the tenant, a landlord of the space being the owner of, or lessor of the tenant improvements to, the special purpose entity under tax accounting rules (page 1, lines 34-35), financial statements of the special purpose entity being consolidated with financial statements of the landlord (page 1, lines 28-30), rent payments under the improvements lease being fully tax deductible to the tenant (page 2, lines 7-10).

Claim 36: Little discloses the method of claim 31. Little also disclose wherein the step of capitalizing the special purpose entity by participations comprising (a) an equity investment by the landlord of at least three percent of the value of the tenant improvements and (b) debt issued by the special purpose entity for at least about eighty percent of the value of the tenant improvements, as was discussed in claim 7 above.

Claim 74: Little discloses a method, comprising the steps of leasing tenant improvements within a space from a special purpose entity to a tenant, the special purpose entity being a legal entity owned by a landlord of the space, the special purpose entity being capitalized by participation comprising (a) an equity investment by the landlord of at least three percent of the a value of the tenant improvements and (b) debt issued by the special purpose entity for at least about eighty percent of the value of the tenant improvements, as discussed above in claims 1, 2 and 7.

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Claim 93: Little discloses a method, comprising the steps of leasing an interest in a space from a special purpose entity to a tenant (page 6, lines 5-34), the special purpose entity being a legal entity owned ed by a landlord of the building including the space, the building being divided for lease to multiple tenants, at least about 80% of the capitalization of the special purpose entity being a loan to the special purpose entity secured by an absolute obligation of the tenant (page 4, lines 42-45).

Claim 96: Little discloses the method of claim 93. Little also discloses wherein at least 3 % of capitalization for the special purpose entity is a loan participation by the landlord (page 4, lines 21-40)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-27, 32-35, 40-52, 56-66, 68-73, 94, 95, 97-101 are rejected under 35

U.S.C. 102(e) as being anticipated by Nancy R. Little, *What you need to know about financing*

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with synthetic leases, Practical Real Estate Lawyer, vol. 5, No. 2, pages 35-46, March 1999 (hereafter Little).

Claim 13: Little discloses the method of claim 3. However, Little does not explicitly disclose wherein the improvements have been constructed and are owned by the landlord, the tenant or jointly by landlord and tenant, and further comprising the step of conveying or leasing the improvements to the special purpose entity before or concurrently with entry into the improvements lease. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 14: Little discloses the method of claim 3. However, Little does not explicitly disclose wherein equity and/or debt investments by the landlord in a plurality of special purpose entities owned by the landlord, each special purpose entity owning improvements for lease to a corresponding tenant, are cross-collateralized. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 15: Little discloses the method of claim 3. However, Little does not explicitly disclose wherein equity and/or debt investments by the landlord in a plurality of special purpose entities owned by the landlord, each special purpose entity owning improvements for lease to a

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corresponding tenant, are not cross-collateralized. Official notice is taken that this step is are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 16: Little discloses the method of claim 3. However, Little does not explicitly disclose wherein the improvements being financed by debt issued by the special purpose entity, the debt being secured at least in part by alien on the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 17: Little discloses the method of claim 3. However, Little does not explicitly disclose wherein the improvements being financed by debt issued by tile special purpose entity, the debt not being secured by a lien on the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 18: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein the special purpose entity is a limited liability company, grantor trust, business trust, corporation, limited partnership, or other business association. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to

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one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 19: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein the special purpose entity has no ownership interest in any real property that includes the space. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 20: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein rent payments under the improvements lease have a present value at least equal to a value of tile improvements at a time a of commencement of the improvements lease. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 21: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein the improvements being off-balance-sheet for the tenant, financing for the improvements being related to the cost of funds of the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 22: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein financing for the improvements is provided by an entity other than the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 23: Little discloses the method of claim 2. However, Little does not explicitly disclose the step of entry by the tenant into an obligation to construct the improvements and to assume costs associated with the construction. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 24: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein rent payments under the improvements lease are secured, in full or in part, by a personal or corporate guaranty or by a letter of credit of the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

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Claim 25: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein the tenant is the only tenant in a building in which the space is located. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 26: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein the space is one of a plurality of spaces of a building divided for lease to a plurality of tenants, and the tenant is one of the plurality of tenants. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 27: Little discloses the method of claim 2. However, Little does not explicitly disclose wherein upon an event of default under the improvements lease, the tenant is obligated to purchase the improvements from the special purpose entity for a stipulated amount. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the business.

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Claim 32: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the improvements are financed by debt issued by the special purpose entity, the debt being non-recourse against the special purpose entity, the landlord and the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to protect the special purpose entity.

Claim 33: Little discloses the method of claim 32. However, Little does not explicitly disclose wherein the debt is secured by a rent obligation of the tenant under a lease of the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to protect the special purpose entity.

Claim 34: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the rent payments under the improvements lease have a present value at least equal to a value of the improvements at a time of commencement of the improvements lease. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to protect the special purpose entity.

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Claim 35: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the improvements lease is structured together with the space lease to support an accounting conclusion that the two leases are to be considered together as a single lease, classified as an operating lease. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to protect the special purpose entity.

Claim 40: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein a building in which the space is located is encumbered by a mortgage; and the step of entry by the lender to the special purpose entity and a mortgagee of the mortgage into an inter-creditor agreement, each waiving any interest in the other's collateral. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such steps. One would have been motivated to use such steps in order to minimize the risk of the special purpose entity.

Claim 41: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the improvements have been constructed and are owned by the landlord, the tenant or jointly by landlord and tenant; and comprising the step of conveying or leasing the improvements to the special purpose entity before or concurrently with entry into the improvements lease. Official notice is taken that these steps are old and well known within the

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lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such steps. One would have been motivated to use such steps in order to minimize the risk of the special purpose entity.

Claim 42: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein equity and/or debt investments by the landlord in a plurality of special purpose entities owned by the landlord, each special purpose entity owning improvements for lease to a corresponding tenant, are cross-collateralized. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to minimize the risk of the special purpose entity.

Claim 43: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein equity and/or debt investments by the landlord in a plurality of special purpose entities owned by the landlord, each special purpose entity, owning improvements for lease to a corresponding tenant, are not cross-collateralized. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to minimize the risk of the special purpose entity.

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Claim 44: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the special purpose entity is a limited liability company, grantor trust, business trust, corporation, limited partnership, or other business association. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to minimize the risk of the special purpose entity.

Claim 45: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the special purpose entity has no ownership interest in any real property that includes the space. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to minimize the risk of the special purpose entity.

Claim 46: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the improvements being off-balance-sheet for the tenant, financing for the improvements being related to the cost of funds of the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

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Claim 47: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein financing for the improvements is provided by an entity other than the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

Claim 48: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the step of entry by the tenant into an obligation to construct the improvements and to assure a costs associated with the construction. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

Claim 49: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein rent payments under the improvements lease are secured, in full or in part, by a personal or corporate guaranty or by a letter of credit of the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

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Claim 50: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the tenant is the only tenant in a building in which the space is located. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

Claim 51: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein the space is one of a plurality of spaces of a building divided for lease to a plurality of tenants and the tenant is one of the plurality of tenants. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

Claim 52: Little discloses the method of claim 31. However, Little does not explicitly disclose wherein upon an event of default under the improvements lease, the tenant is obligated to purchase the improvements from the special purpose entity for a stipulated amount. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

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Claim 56: Little discloses a method, comprising the steps of leasing an interest in real estate from a special purpose entity to a tenant, the special purpose entity being a legal entity owned by a landlord of the real estate that includes the leased interest. (Page 1, lines 26--52 and page 6, lines 5-36).

However, Little does not explicitly disclose wherein the special purpose entity owning the lease of the leased interest, development of an asset underlying the leased interest being financed by debt issued by the special purpose entity, the debt being non-recourse against the special purpose entity, the landlord and the asset. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to minimize the risk of the special purpose entity.

Claim 57: Little discloses the method of claim 56. However, Little does not explicitly disclose wherein the interest leased is an interest in improvements to a shorter-lived asset and further comprising the step of leasing a longer-lived asset to the tenant, rent payments under the lease of the shorter lived asset having a present value at least equal to a cost of the shorter-lived asset at a time of commencement of the lease of the shorter-lived asset; and the lease to the shorter-lived asset being structured together with the lease to the longer-lived asset to support an accounting conclusion that the two leases are to be considered together as a single lease and classified as an operating lease. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in

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the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to minimize the risk of the special purpose entity.

Claim 58: Little discloses the method of claim 56. Little also discloses wherein leasing tenant improvements within a space from a special purpose entity to a tenant, the special purpose entity being a legal entity owned, or leased the tenant improvements, by a landlord of the space, the special purpose entity being capitalized by participations comprising:

(a) an equity investment by the landlord of at least three percent of the value of the tenant improvements and

(b) debt issued by the special purpose entity for at least about eighty percent of the value of the tenant improvements; as discussed above in claim 7.

Claim 59: Little discloses the method of claim 56. However, Little does not explicitly disclose wherein the debt is secured by a triple-net absolute rent obligation of the tenant under a lease of the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

Claim 60: Little discloses a method, comprising the steps of leasing a longer-lived asset and a shorter-lived asset to a lessee under two separate leases, rent payments under the lease of the shorter-lived asset, and the lease to the shorter-lived asset being structured together with the lease to the longer lived asset to support an accounting conclusion that the two leases are to be

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considered together as a single lease, classified as an operating lease, as discussed above in claims 1, 2, 28 and 31.

However, Little does not explicitly disclose wherein the shorter-lived asset having a present value at least equal to a cost of the shorter-lived asset at the time of commencement of the lease of the shorter-lived asset. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 61: Little discloses a method the method of claim 60. However, Little does not explicitly disclose wherein the longer-lived asset is a space in a building; and the shorter-lived asset is tenant improvements to the space. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 62: Little discloses a method the method of claim 61. However, Little does not explicitly disclose wherein the improvements are owned by a special purpose entity, being a legal entity owned by a landlord of the space. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

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Claim 63: Little discloses a method the method of claim 62. Little further comprising the steps of capitalizing the special purpose entity by participation comprising (a) an equity investment by the landlord of at least three percent of the value of tile improvements and (b) debt issued by the special purpose entity for at least about eight~ percent of the value of the improvements, as discussed above in claim 7. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to increase the system flexibility.

Claim 64: Little discloses a method the method of claim 62. However, Little does not explicitly disclose wherein rent payments under the improvements lease are fully tax deductible to the lessee. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 65: Little discloses a method the method of claim 62. Little also discloses wherein the special purpose entity is capitalized by participation comprising (a) an equity investment by the landlord of at least three percent of the value of the improvements and (b) debt issued by the special purpose entity for at least about eighty percent of the value of the improvements, as discussed above in claim 7.

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Claim 66: Little discloses a method the method of claim 62. However, Little does not explicitly disclose wherein the building is divided for lease to multiple lessees. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 68: Little discloses the method of claim 62. However, Little does not explicitly disclose wherein the improvements have been constructed and are owned by the landlord, the lessee, or jointly by landlord and lessee; and further comprising the step of conveying or leasing the improvements to the special purpose entity before or concurrently with entry into the improvements lease. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to increase the system flexibility.

Claim 69: Little discloses the method of claim 62. However, Little does not explicitly disclose wherein the landlord owns a plurality of special purpose entities, each owning improvements for lease to a lessee. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

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Claim 70: Little discloses the method of claim 62. However, Little does not explicitly disclose wherein the special purpose entity has no ownership interest in any real property that includes the space. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 71: Little discloses the method of claim 61. However, Little does not explicitly disclose wherein the improvements being off-balance-sheet for the lessee, financing for the improvements being related to the cost of funds of the lessee. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 72: Little discloses the method of claim 61. However, Little does not explicitly disclose the step of entry by the lessee into an obligation to construct the improvements and to assume costs associated with the construction. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 73: Little discloses the method of claim 61. However, Little does not explicitly disclose wherein upon an event of default under the improvements lease, the lessee is

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obligated to purchase the improvements from the special purpose entity for a stipulated amount. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 94: Little discloses the method of claim 93. However, Little does not explicitly disclose wherein the interest is a possessory interest in improvements to the space, the space being leased to the tenant under a separate lease, rent payments under the improvements lease having a present value at least equal to a cost of the improvements at a time of commencement of the improvements lease. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 95: Little discloses the method of claim 93. However, Little does not explicitly disclose the step of structuring the improvements lease together with the space lease to support an accounting conclusion that the two leases are to be considered together as a single lease, classified as an operating lease. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

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Claim 97: Little discloses the method of claim 93. However, Little does not explicitly disclose wherein at least 10% of capitalization for the special purpose entity is contributed by the landlord. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 98: Little discloses the method of claim 93. However, Little does not explicitly disclose wherein a majority of the loan to the special purpose entity is supplied by a party other than the landlord, and the landlord owns a participation in the loan made to the special purpose entity. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 99: Little discloses the method of claim 93. However, Little does not explicitly disclose wherein the improvements are financed by debt issued by the special purpose entity, the debt not being secured by a lien on the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

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Claim 100: Little discloses the method of claim 93. However, Little does not explicitly disclose wherein the special purpose entity is a limited liability company, grantor trust, business trust, corporation, limited partnership, or other business. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility. association.

Claim 101: Little discloses the method of claim 93. However, Little does not explicitly disclose wherein financing for the improvements is provided by an entity other than the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

6. Claims 8-12, 37-39, 67, and 75-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nancy R. Little, *What you need to know about financing with synthetic leases*, Practical Real Estate Lawyer, vol. 5, No. 2, pages 35-46, March 1999 (hereafter Little), in view of F.W. Galaty et al., *Modern Real Estate Practice*, Real Estate Education Co., 15th. Ed., 1999, Ch. 16 (hereafter Galaty).

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Claims 8: Little discloses the method of claim 3, wherein at least about 80% of the capitalization of the special purpose entity is a loan to the special purpose entity secured by a obligation of the tenant. Little does not explicitly disclose when the obligation of the tenant is a triple-net absolute obligation. Galaty discloses when the obligation of the tenant is a triple-net absolute obligation (page 260, lines 1-9). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a triple-net absolute obligation. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 9: Little and Galaty disclose the method of claim 8. Little also discloses wherein at least 3 % of capitalization for the special purpose entity is a loan participation by the landlord, as discussed above in claim 7.

Claim 10: Little and Galaty disclose the method of claim 8. Little also discloses wherein at least 10% of capitalization for the special purpose entity is contributed by the landlord, as discussed above in claim 7.

Claim 11: Little and Galaty disclose the method of claim 8. However, the references does not explicitly disclose wherein a majority of the loan to the special purpose entity is supplied by a party other than the landlord, and the landlord owns a participation in the loan made to the special purpose entity. Official notice is taken that the steps in which a majority of the loan to the special purpose entity is supplied by a party other than the landlord, and the landlord owns a participation in the loan made to the special purpose entity are old and well known within the

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lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 12: Little and Galaty disclose the method of claim 8. However, the references does not explicitly disclose wherein a building in which the space is located is encumbered by a mortgage; and further comprising the step of entry by the lender to the special purpose entity and a mortgagee of the mortgage into an inter-creditor agreement, each waiving any interest in the other's collateral. Official notice is taken that the steps in which the space is located is encumbered by a mortgage; and further comprising the step of entry by the lender to the special purpose entity and a mortgagee of the mortgage into an inter-creditor agreement, each waiving any interest in the other's collateral are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such steps. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 37: Little discloses the method of claim 31, wherein at least about 80% of be capitalization of the special purpose entity is a loan to the special purpose entity, as discussed above in claim 7. However, Little does not explicitly disclose when the special purpose entity is secured by a triple-net absolute obligation of the tenant. Galaty discloses when the obligation of the tenant is a triple-net absolute obligation (page 260, lines 1-9). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a

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triple-net absolute obligation. One would have been motivated to use such as a step in order to minimize the risk of the business.

Claim 38: Little and Galaty disclose the method of claim 37. However, Little does not explicitly disclose wherein at least 10% of capitalization for the special purpose entity is contributed by the landlord. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

Claim 39: Little and Galaty disclose the method of claim 37. However, Little does not explicitly disclose wherein a majority of the loan to the special purpose entity is supplied by a party other than the landlord and tenant, and the landlord owns a participation in the loan made to the special purpose entity. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to minimize the risk of the special purpose entity.

Claim 67: Little discloses the method of claim 66. Little and Galaty disclose wherein at least about 80% of the capitalization of the special purpose entity is a loan to the special purpose entity secured by a triple-net absolute obligation of the lessee, as discussed above in claim 8.

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Claim 75: Little discloses the method of claim 74. Little and Galaty discloses wherein the building is divided for lease to multiple tenants, at least about 80% of the capitalization of the special purpose entity being a loan to the special purpose entity secured by a triple-net absolute obligation of the tenant, as discussed above in claim 8.

Claim 76: Little and Galaty disclose the method of claim 75. Little also discloses wherein at least 3 % of capitalization forth a special purpose entity is a loan participation by the landlord, as discussed above in claim 7.

Claim 77: Little and Galaty disclose the method of claim 75. However, the references does not explicitly disclose wherein a building in which the space is located is encumbered by a mortgage; and further the step of, entry by the lender to the special purpose entity and a mortgagee of the mortgage into an inter-creditor agreement, each waiving any interest in the other's collateral. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to increase the system flexibility.

Claim 78. Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein financial statements of the special purpose entity are consolidated with financial statements of the landlord. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 79: Little and Galaty disclose the method of claim 78. However, the references not explicitly disclose wherein rent payments under the improvements lease are fully tax deductible to the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 80: Little and Galaty disclose the method of claim 78. However, the references does not explicitly disclose wherein the improvements being financed by debt issued by the special purpose entity, the debt being non-recourse against the special purpose entity, the landlord and the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 81: Little and Galaty disclose the method of claim 80. Little and Galaty also discloses wherein the debt is secured by a triple-net absolute rent obligation of the tenant under a lease of the improvements, as discussed above in claim 8.

Claim 82: Little and Galaty disclose the method of claim 78. However, the references does not explicitly disclose wherein the improvements have been constructed and are owned by

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the landlord, the tenant or jointly by landlord and tenant; and the step of conveying or leasing the improvements to the special purpose entity before or concurrently with entry into the improvements lease. Official notice is taken that these steps are old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to increase the system flexibility.

Claim 83: Little and Galaty disclose the method of claim 78. However, the references does not explicitly disclose wherein the improvements being financed by debt issued by the special purpose entity, the debt not being secured by a lien on the improvements. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 84: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein the special purpose entity is a limited liability company or limited partnership. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 85: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein the special purpose entity is a grantor trust or business trust.

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Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 86: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein the special purpose entity is a corporation. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 87: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein the special purpose entity has no ownership interest in any real property that includes the space. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 88: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein the improvements being off-balance-sheet for the tenant, financing for the improvements being related to the cost of funds of the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been

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obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 89: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein financing for the improvements is provided by an entity other than the tenant. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 90: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein the tenant is the only tenant in a building in which the space is located. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 91: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein the space is one of a plurality of spaces of a building divided for lease to a plurality of tenants, and the tenant is one of the plurality of tenants. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a

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step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 92: Little and Galaty disclose the method of claim 74. However, the references does not explicitly disclose wherein upon an event of default under the improvements lease, the tenant is obligated to purchase the improvements from the special purpose entity for a stipulated amount. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

7. Claims 28-30 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weatherly et al. (U.S. Patent No. 6,049,784) (hereafter Weatherly), in view of Nancy R. Little, What you need to know about financing with synthetic leases, Practical Real Estate Lawyer, vol. 5, No. 2, pages 35-46, March 1999 (hereafter Little)

Claim 28: Weatherly discloses a computer, programmed to solicit proposals from tenants for financing for tenant improvements to spaces leased by the respective tenants under respective space leases, and to solicit offers of financing from lenders to the tenants proposals, and notify the respective tenant and lender when an offer matches a proposal(Col. 1, lines 9-58, col. 3, 45-52, col. 3, line 66-col. 4, line 65, col. 5, line 60-col. 7, line 67, col.8. lines 1-12).

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However, Weatherly does not disclose wherein each proposal offering terms for lease of tenant improvements to the corresponding space under an improvements lease distinct from the corresponding space lease, each improvements lease to be structured together with the corresponding space lease to support an accounting conclusion that the space lease and improvements lease are to be considered together as a single lease and classified as an operating lease. Little discloses improvements lease to be structured together with the corresponding space lease to support an accounting conclusion that the space lease and improvements lease are to be considered together as a single lease and classified as an operating lease (page 1, lines 28-51). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to maximize the taxes deduction.

Claim 29: Weatherly and Little disclose the computer of claim 28. However the references does not explicitly disclose being further programmed to solicit offers of financing using an auction protocol. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to facilitate to numerous participants to make their offers.

Claim 30: Weatherly and Little disclose the computer of claim 28. However the references does not explicitly disclose being further programmed to store information on a plurality of tenant improvement loans closed between tenants and landlords, and to analyze the

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information. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claims 53: Weatherly discloses a computer, programmed to solicit proposals from tenants for financing for tenant improvements to spaces leased by the respective tenants under respective space leases, each proposal offering terms for lease of tenant improvements to the corresponding space under an improvements lease distinct from the corresponding space lease (Col. 1, lines 9-58, col. 3, 45-52, col. 3, line 66-col. 4, line 65, col. 5, line 60-col. 7, line 67, col.8. lines 1-12).

However, Weatherly does not disclose wherein each improvements lease is providing for lease of tenant improvements from a special purpose entity to the tenant, a landlord of be space being the owner of, or lessor of the tenant improvements to, the special purpose entity under tax accounting rules, financial statements of the special purpose entity to be consolidated with financial statements of the landlord, rent payments under the improvements lease to be fully tax deductible to the tenant; and to solicit offers of financing from lenders to the tenants' proposals, and notify the respective tenant and lender when an offer matches a proposal (page 1, lines 24-52 and page 6, lines 5-36). Little discloses considering together as a single lease and classified as an operating lease (page 1, lines 28-51). Therefore, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to use such as steps. One would have been motivated to use such as steps in order to maximize the taxes deduction.

Claim 54: Weatherly and Little disclose the computer of claim 53. However the references does not explicitly disclose being further programmed to solicit offers of financing using an auction protocol. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Claim 55: Weatherly and Little disclose the computer of claim 53. However the references does not explicitly disclose being further programmed to store information on a plurality of tenant improvement loans closed between tenants and landlords, and to analyze the information. Official notice is taken that this step is old and well known within the lease art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such as a step. One would have been motivated to use such as a step in order to increase the system flexibility.

Conclusion

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8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. Pedro R. Kanof whose telephone number is (703) 308-9552. The examiner can normally be reached on weekdays from 7:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Vincent Millin, can be reached on (703) 308-1065. The fax phone number for this Group is (703) 308-1396.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

PRK-1/9/2002.

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